



No. 586

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

ANNIE MAX BRADLEY, PETITIONER

v.

LENA M. BRADLEY AND UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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This case involves a dispute between petitioner, the widow of a deceased officer of the Air Corps, and respondent, Lena M. Bradley, his mother, as to the distribution of the proceeds admittedly payable by the Government under a \$10,000 policy of life insurance issued to the officer under the National Service Life Insurance Act of 1940 (R. 56-57).

The suit was brought by the insured's mother against petitioner and the Government in the United States District Court for the Eastern District of Oklahoma (R. 1-11). ^{1/} The case was tried before the court, without a jury (R. 26-39), resulting in a decree awarding petitioner

^{1/} The jurisdiction of the district court rested on Section 16 of the National Service Life Insurance Act of 1940, 54 Stat. 1008, 1014, as amended July 11, 1942, c. 504, sec. 6, 56 Stat. 659 (38 U.S.C., Sec. 817).

the full amount of the insurance benefits (R. 43-44). The court held (R. 42), upon the issues made by the pleadings (R. 9-11, 14, 21-22, 24), (1) that the insured, as previously determined by the Veterans' Administration (R. 27), had effected a change of the beneficiary of the insurance from his mother to petitioner, and (2) that an agreement alleged by the mother to have been made with petitioner to divide the insurance proceeds equally between them (R. 3-7, 9), if made, was illegal and void. Under this alleged agreement, the mother sought recovery of one-half of the proceeds (R. 11). She appealed from the adverse decision of the district court (R. 45). The Government also appealed (R. 45), but challenged only the award of attorneys' fees made in the decree (R. 47). The Government contended (R. 47), as in a motion previously made by it to amend the decree (R. 44), that the award, in ordering payment of the fees in one lump sum from the payment of accrued insurance benefits, in an amount in excess of 10 per cent of that payment, contravened Section 500 of the World War Veterans' Act, 1924, as amended (38 U.S.C., Sec. 551^{2/}, which specifically provides that the amount awarded for legal fees shall be paid at a rate "not exceeding 1-10th of each . . . payment" of insurance benefits.

The Circuit Court of Appeals for the Tenth Circuit reversed the judgment of the district court, with directions to proceed in

^{2/} This Section was expressly made applicable to National Service Life Insurance suits by Section 16 of the National Service Life Insurance Act of 1940, as amended July 11, 1942, c. 504, sec. 6, 56 Stat. 659 (38 U.S.C., Sec. 817).

^{3/} The judgment of the circuit court of appeals was entered on May 30, 1944 (R. 68). With the court's permission (R. 69), a petition for rehearing was filed out of time on June 26, 1944 (R. 70-75). This petition was denied on July 5, 1944 (R. 78). On July 6, 1944, a "petition to reopen" the case (in order to present three allegedly pertinent new decisions) was filed (R. 79-82) without obtaining permission of the court; this petition was denied, after being considered by the court, on July 21, 1944 (R. 83). No stay of mandate was requested by petitioner. The mandate to the district court was issued by the circuit court of appeals on July 28, 1944 (R. 83). The petition for certiorari was filed on October 11, 1944, within the statutory three months from the denial of the petition to reopen but more than three months after the denial of the petition for rehearing. As correspondent points out (brief in opposition, pp. 1-3), the timeliness of this petition for certiorari is not free from doubt. Cf. Spuy Oil Co. v. Escoe, 275 U.S. 498.

accordance with the views expressed in its opinion (R. 56-68).

Judge Phillips dissented (R. 65-67) only with respect to the holding of the majority (R. 64) that the insured, in executing a "Confidential and Personal Report" for filing with this group headquarters, containing statements by him that petitioner was the beneficiary of his insurance and that the policy was in her possession (R. 8, 22), did not do so for the purpose of effectuating an intention to make petitioner the beneficiary of his insurance. It was not disputed by the dissenting judge (R. 65-67) that, as stated by the majority (R. 62), the "expressed intention of the insured to change the beneficiary, standing alone and unaccompanied by some affirmative act, having for its purpose the effectuation of his intention, is insufficient to effect a change of beneficiary"

The court below upheld the Government's contention as to error in the award of attorneys' fees (R. 64-65). It also approved the refusal of the district court to recognize or give effect to the alleged agreement to divide the proceeds of the policy, holding (R. 60) that such an agreement would constitute an assignment by the designated beneficiary for payments of benefits due or to become due under the policy, and that such an assignment was specifically prohibited by Section 3 of the Act of August 12, 1935, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (38 U.S.C., Sec. 454a), ^{4/} and made applicable to National Service Life Insurance by Section 616 of the National Service Life Insurance Act of 1940 (38 U.S.C., Sec. 816).

The question involved in the case as presented by the petition for certiorari appears to be factual. Petitioner, like the dissenting

^{4/} This Act provides, in part: "Payments of benefits due or to become due shall not be assignable,"

Judge in the court below, challenges only the holding of the court below that the insured's designation of her as the beneficiary of his policy in the "Confidential and Personal Report" was not for the purpose of effectuating his expressed intention (R. 37-39) to make her the beneficiary (Pet. 4, 6). None of the cases upon which she relies (Pet. 2, 3, 4) presents any conflict with the decision of the court below, except with respect to determination of questions of fact. But, in view of the Government's lack of pecuniary interest in the determination of this question in the instant case, it does not oppose the granting of the petition.

However, if the Court should grant the writ of certiorari in this case, we urge that it be limited, as is the petition therefor, to the question presented by the holding of the court below that there was not a change of beneficiary, since the other rulings of the court below, viz., that the alleged agreement to divide the proceeds of the policy was void and that there was error in the manner of awarding the attorneys' fees, were both clearly correct and present no questions as to which there is a conflict of decisions.

Respectfully submitted.

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NOVEMBER 1944.

